Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Rural Call Completion	)))))	WC Docket No. 13-39

REPLY COMMENTS OF THE NEW JERSEY DIVISION OF RATE COUNSEL

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SUMMARY

The Commission's policies regarding call completion are clear, yet rural call completion failures remain persistent and widespread. Prior action by the Commission (in the form of a Declaratory Order and the implementation of a Task Force, for instance) as well as assurances by telecommunications providers that they monitor call completion rates and have invested heavily in service quality have failed to solve the problem. Public safety and commerce continue to suffer as a result.

The comments in this proceeding indicate generally widespread support, particularly from consumer advocates, state regulators, and rural local exchange carriers, for the Commission's proposed reporting and data retention requirements as well as for signaling integrity rules. Improved data collection and monitoring will only be possible, however, if the Commission refrains from carving out too many exceptions or safe harbors. Furthermore, the reporting may shed light on the causes of the problem and the actors involved, but the Commission must also enforce its rules adequately. Reporting is essential, but not sufficient, to protect consumers.

Furthermore, the data (with minor exceptions) should be public and states should have access to carrier data that relates to their enforcement actions. Some of these issues may gradually diminish as the intercarrier compensation transition continues. Nonetheless, it is premature to establish a sunset date. Addition ally, it is evident that as telecommunications providers and consumers transition away from traditional wireline connections to the public switched telephone network ("PSTN"), the transition may, in and of itself, be causing at least a portion of the rural call completion problem. Thus reporting and enforcement are essential and

should not sunset, but instead should be affirmatively ended only after the problem is solved to the satisfaction of the Commission, and with such a deliberation being informed by stakeholders.

Consumers should have a general expectation that their voice calls will be handled relatively comparably and reliably no matter where they live, who they are calling, or what technology they use to place a voice call. Consumers' lives and livelihood depend upon call completion. There is no reason that network reliability should be allowed to decline or that the Commission should sanction lower service quality levels for a particular group of consumers.

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I. INTRODUCTION

The New Jersey Division of Rate Counsel ("Rate Counsel") replies to the comments submitted last month[1] regarding the rules that the Federal Communications Commission ("FCC"

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[1] / Comments to which Rate Counsel responds, include, comments filed by AT&T Inc. ("AT&T"); The South Dakota Telecommunications Association (whose members include the 21 independent rural incumbent local exchange carriers in South Dakota), Butler-Bremer Communications, Choctaw Telephone Company, Electra Telephone Company, Haxtun Telephone Company, Lincoln County Telephone System, Inc., MoKan Dial, Inc., Pymatuning Independent Telephone Company, Tatum Telephone Company, Waitsfield-Fayston Telephone Co., Inc., Walnut Hill Telephone Company, Inc., Walnut Telephone Company d/b/a Walnut Communications, Webster-Calhoun Cooperative Telephone Association, and Wiggins Telephone Association ("Blooston Rural Carriers"); CenturyLink; Comcast Corporation and its affiliates ("Comcast"); COMPTEL; California Public Utilities Commission and the People of the State of California ("CPUC"); Bay Springs Telephone Company, Inc., Breda Telephone Corp., BTC, Inc., Cooperative Telephone Company, Crockett Telephone Company, Dumont Telephone Company, East Buchanan Telephone Cooperative, Hickory Telephone Company, Modem Cooperative Telephone Company, Moultrie Independent Telephone Company, Mutual Telephone Company of Morning Sun, National Telephone of Alabama, Inc., Ogden Telephone Company, Olin Telephone Company, Inc., Palmer Mutual Telephone Company, Peoples Telephone Company, Prairie Telephone Co., Inc., Roanoke Telephone Company, Royal Telephone Company, Sharon Telephone Company, Springville Cooperative Telephone Company, Terril Telephone Company, The Farmers Mutual Telephone Company of Stanton, Iowa, Villisca Farmers Telephone Company, Wellman Cooperative Telephone Association, West Liberty Telephone Company, Westside Independent Telephone Company, West Tennessee Telephone Company, Inc., and WTC Communications, Inc. (collectively the "Independents"); Iowa Network Services ("INS"); the state public service commissions and departments from the states of California, Idaho, Indiana, Iowa, Michigan, Minnesota, Montana, Nebraska, New York, Ohio,

or "Commission") proposes to address the persistent problems that are preventing rural customers from receiving calls.[2] As recognized by most commenters, the failure to complete calls has wide-ranging impacts on commerce and public safety. The proposed reporting requirements will enable the Commission to analyze the roots of the problem. However, without a firm commitment to enforcement and to avoid carving out too many reporting exemptions, the resulting reporting and data retention requirements will not solve the problem in and of itself.

II. DISCUSSION

Consumer harms persist as a result of failed rural call completion.

The NPRM cites overwhelming evidence in the record that call-termination issues are both significant and pervasive[3] and commenters have provided yet more evidence that problems persist.[4] Rural call completion problems "compromise the integrity of the Public Switched Telephone Network (PSTN) by undermining the standards of reliable and universal telephone service."[5] The consequences of call completion problems can be dire and encompass various public safety, economic, social and other possibilities such as the inability to make or receive a

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Pennsylvania, South Dakota, Vermont, and West Virginia, listed in Attachment A to their comments ("Joint State Commissions"); Level 3 Communications, LLC ("Level 3"); National Association of Regulatory Utility Commissioners ("NARUC"); National Association of State Utility Consumer Advocates ("NASUCA"); National Exchange Carrier Association, Inc., NTCA – The Rural Broadband Association, the Western Telecommunications Alliance, and the Easter Rural Telecom Association ("Rural Associations"); Sprint Nextel Corporation ("Sprint"); Time Warner Cable, Inc. ("Time Warner Cable"); United States Telecom Association ("USTelecom"); Verizon and Verizon Wireless ("Verizon"); and Vonage Holdings Corp. ("Vonage").

2/ In the Matter of Rural Call Completion, WC Docket No. 13-39, *Notice of Proposed Rulemaking*, rel. February 7, 2013 ("NPRM"); FCC Public Notice, DA 13-780, "Wireline Competition Bureau Announces Deadlines for Comments on Rural Call Completion Notice of Proposed Rulemaking, Invites Comment on List of Rural Operating Carrier Numbers," WC Docket No. 13-39, released April 18, 2013.

3/ NPRM, at paras. 4-6. *See, also*, NASUCA, at 1; NARUC, at 2.

4/ *See, e.g.*, Independents, at 4-8; NARUC, at 2; Rural Associations, at 1-4.

5/ CPUC, at 3.

telephone call, which can delay communication with public safety entities; the loss of customers by businesses, businesses' inability to contact suppliers, businesses' inability to be reached by their customers; and isolation by families who are cut off from their relatives.[6]

Rural call completion "is an issue that can seriously impact the lives and livelihood of all rural, suburban, and urban customers as these calls may originate or terminate anywhere in the United States."[7] Furthermore call completion failures jeopardize the nation's long-standing commitment to universal service.[8] As industry migrates to new technological platforms for offering telecommunications services, this migration should not justify or be permitted to lead to an erosion of network integrity, nor to disparate treatment of urban and rural calls. Instead, the FCC should ensure that its rules and enforcement promote the nation's commitment to universal service throughout all communities, and that industry be prevented from offering inferior service to some areas.

Furthermore, the FCC's efforts thus far have not resulted in a sustained reduction in rural call completion issues. Commenters indicate that consumer complaints continue to grow despite prior Commission action in the form of workshops, a task force, and a Declaratory Ruling.[9] The proposed reporting rules are a significant first step to evaluating the problem. Enforcement measures and the adoption of standards are also required.

Sprint argues that no single cause has been found for rural call completion issues and that

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6/ CPUC, at 3.

7/ Joint State Commissions, at 2.

8/ CPUC, at 3-4.

9/ *See, e.g.*, Rural Associations, at 3-4; NARUC, at 2-3.

the evidence does not show an industry-wide problem.[10] Rate Counsel certainly agrees that intermediate carriers are not used solely for the purpose of arbitrage and may, in some instances, improve the quality, reliability, or cost of service without negatively impacting consumers.[11] However, Sprint's contention that informal consumer complaints "are not dispositive of a widespread problem"[12] and that the RLEC industry data has not been subject to public review and should not be accepted as evidence by the FCC[13] should be rejected; commenters have provided ample evidence of a flawed telecommunications infrastructure in this proceeding. Furthermore, if the Commission does not have a full picture of the causes of rural call completion issues, then this lack of information is in and of itself justification for comprehensive reporting.

There is widespread support for FCC adoption of reporting requirements.

Although commenters vary in the specifics of some of their recommendations, there is widespread support for the FCC's proposal to adopt rules to remedy pervasive call completion failures in rural communities.[14] State regulators and consumer advocates support better data collection by the FCC.[15]

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10 / Sprint, at 2.

11 / *Id.*, at 9. *See, also*, NARUC, at 6 recognizing causes beyond "least cost router" issues.

12 / Sprint, at 8.

13 / *Id.*, at 4. *See, also*, id., at 5 stating: "There is no way to assess the validity of either the methodology of the results of these studies."

14/ *See, e.g.*, Vonage, at 5; Rural Associations, at i; NARUC, at 3; Comcast, at 1; CPUC, at 1; INS, at 5; Level 3, at 1; NASUCA, at 3; Independents, at i.

15/ *See, e.g.*, CPUC, at 1, 4-5; NARUC, at 3-4; NASUCA, at 3-4.

Some, however, offer (at best) tepid support for the FCC's proposed rules.[16] AT&T states that it "strongly supports the Commission's efforts to ensure the reliable and efficient operation of the nation's telephone network,"[17] yet it also contends that "[t]argeted and vigorous enforcement of existing legal duties may be a more effective means than broad rules during this limited transition period.[18] AT&T recommends that the rules be "narrowly tailored and minimally burdensome."[19] In its assessment of the potential burden of new rules on carriers, the Commission should also consider the substantial harm and burden on consumers when calls are not completed. Carriers that are in the business of offering customers voice connections to the public switched telephone network should assume the responsibility for monitoring and ensuring the quality of those calls. The steps that are necessary to ensure and to demonstrate network integrity and call completion should not be considered "burdens" but rather should be considered as operational elements that are integrally related to the business of providing telecommunications services in the United States.

The Commission should carefully consider proposed modifications and exclusions to reporting requirements.

Commenters have presented various proposals modifying the Commission's initial proposal, some with merit and some without. Rate Counsel does not address each and every

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16 / Sprint, Time Warner, and Verizon, among other industry members, oppose the adoption of the proposed rules. Sprint, at 14, Time Warner Cable, at 1; Verizon, at 3. Comcast does not oppose reporting call termination to the Commission provided that: (1) the call detail and related data are afforded proprietary treatment; (2) the reporting obligations sunset when the intercarrier compensation transition is complete; and (3) the FCC modifies the reporting requirements consistent with industry recommendations. Comcast, at 1, 3, 5. COMPTEL supports ring signal integrity and safe harbors but insists reporting will be burdensome. COMPTEL, at 4, 10.

17 / AT&T, at 1.

18 / *Id.*, at 2.

19 / *Id.*, at 5.

industry proposal, but certainly encourages the Commission to consider those specific modifications that would enhance the effectiveness of the Commission's efforts to ensure signaling integrity, call completion, and accurate data collection and analysis. However, any pleas for excluding particular types of calls[20] should be weighed carefully: the Commission runs the risk of excluding so many "special cases" that the resulting data is too narrow to shed any light on the problem at hand. Rate Counsel concurs, however, that user-related causes should be excluded from metrics that are used to assess carrier performance.

NARUC notes that in state investigations of call completion issues, several industry metrics have proven useful to understanding the problem, including: Answer Seizure Ratio (ASR) (similar to the proposed "call answer rates"); Network Efficiency Ratio (NER); Average Call Duration (ACD) and Post Dial Delay.[21] NARUC's reasoning and proposal to include these metrics in the required reports are sound,[22] and the Joint State Commissions support NARUC's approach.[23] Notably, Time Warner proposes that if the FCC is going to require reporting, it include the NER because it "offers a more accurate and realistic measure of call completion issues than the call answer rate would."[24]

Rate Counsel does not concur with recommendations that data be submitted quarterly.[25] As discussed in its comments (at 7), Rate Counsel recommends that *each month* industry submit three "rolling" months of data rather than submit data only four times per year. INS aptly

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20 / *See, e.g.*, Comcast, at 2, 7, and 9; Level 3, at 9-11; CenturyLink, at 16.

21 / NARUC, at 12-13.

22 / *Id.*

23 / Joint State Commissions, at 1.

24 / Time Warner, at 10. *See, also*, Comcast, at 9-10 recommending the use of the NER.

25/ *See, e.g.*, CenturyLink, at 10-11; Comcast, at 4; Level 3, at 16-17.

observes that data submitted on a quarterly basis would be stale, and also recommends that industry submit data each month.[26] To address Level 3's preference for quarterly reporting periods for which three months of data would be totaled to minimize the effect of "fluctuations that would occur within a reporting period due to factors such as the number of weekends, holidays, and other events,"[27] Rate Counsel recommends that each month, industry submit the prior three months' of data, not only shown by month but also averaged over the prior three-month period. Rate Counsel does not oppose the submission of such data 30 days after the end of each month.[28] Industry collects the data, and with today's sophisticated software should be able to submit data each month, within 30 days after the end of the month, for the previous three months' performance without much additional burden.

The Commission should not consider a sampling approach. Sprint proposes that if the Commission adopts the proposed reporting rules, it allow originating carriers to provide a sample, such as a three-day period for each month or a one-week "special study" per quarter.[29] Rate Counsel agrees with NASUCA that sampling may be just as costly for carriers.[30]

The Commission also should reject Sprint's proposal that records be retained for just three, rather than six, months.[31] Rate Counsel supports NASUCA's recommendation that the Commission *lengthen* the time that carriers retain their records to one year. NASUCA's

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26 / INS, at 13.

27/ Level 3, at 16.

28/ Comcast, at 4; Level 3, at 16. CenturyLink does not adequately support its recommendation that the submission be set at 45 days after the end of the period. CenturyLink, at 10-11.

29 / Sprint, at 19.

30 / NASUCA, at 19. See, also, Rural Associations, at 13-14, noting that the Commission recently rejected sampling in its special access data collection.

31 / Sprint, at 19.

assessment that the proposal for six months of record retention "assumes that there will be prompt investigation, which is a big assumption"[32] is astute.

NARUC, however, notes, "collecting data alone is not sufficient to resolve the problem."[33] Rate Counsel supports NARUC's proposal that it take additional steps, including: requiring reports of "industry standard metrics"; registration of call path entities with the FCC; tracking and reporting of the reasons for call completion failure; the creation of a database of contacts for call path entities; elimination of safe harbors; and requiring alerts to consumers that their call is being routed.[34]

Rate Counsel is not as sanguine as are others about the correcting effects of competition.

CenturyLink contends that in the competitive long distance market, interexchange carriers have an incentive to ensure that calls are handled properly.[35] When its customers report troubles, CenturyLink opens a trouble report and investigates the issue.[36] CenturyLink states that "[w]here an intermediate provider was used to route the call and it is identified as the source of the routing trouble, it is removed from the route path, and an investigation of the matter is initiated."[37] Rate Counsel welcomes industry-initiated efforts to detect and to remedy rural call completion problems but is not persuaded that these efforts, on their own, suffice to protect consumers. Indeed, if industry-led efforts to resolve rural call completion problems were adequate, the FCC would not have acquired such extensive evidence demonstrating the contrary.

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32 / NASUCA, at 18.

33 / NARUC, at 3.

34 / *Id.*, at 4.

35/ CenturyLink, at 4-5.

36/ *Id.*, at 4.

37/ *Id.*

Sprint asserts that it has the incentive to make sure calls are completed: "While the RLECs have portrayed themselves and their end users as the harmed or inconvenienced parties, Sprint and its customers are equally harmed or inconvenienced if Sprint calls to rural areas are not being completed."[38] What Sprint fails to acknowledge is that for rural carriers the broken rural call systems impacts all of their customers, while national or urban carriers may experience these problems less frequently. Furthermore, rural customers often place the blame for rural call completion problems on their local carrier.

Sprint suggests that the interexchange market is highly competitive and that consumers can simply vote with their feet.[39] However, the market is similar to the access charge market segment where the calling party may not be the one harmed (or may not be aware of the problem). As the Rural Associations note, oftentimes it is the rural customers who complain to their local phone companies about poor quality as a result of incoming calls.[40] Furthermore, as noted by Rural Associations, the problem does not only harm rural consumers, but it also harms urban consumers calling rural residents and businesses.[41]

Time Warner similarly argues that the intermediate provider creates the problem,[42] but Time Warner does not acknowledge that ultimately it is responsible for the service it provides to consumers. Rate Counsel agrees with NASUCA's assessment that individual consumers cannot put forward their individual complaints with much success given that they often receive the run-

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[38] / Sprint, at 3.

[39] / *Id.*, at 22, stating: "It may be that some subscribers are willing to accept a lower quality of service in exchange for a lower price, and mandating a minimum level of service could eliminate lower cost option that certain end users may prefer."

[40] / Rural Associations, at 2.

[41] / *Id.*, at 4.

[42] / Time Warner, at 4.

around as to which carrier is responsible for any problems that he or she is experiencing as carriers engage in "pass the buck."[43]

Industry arguments that industry can manage the rural call completion problem on its own or that prior Commission action is sufficient to stem the problem should be dismissed.

The industry continues to put forth the argument that carriers are working diligently to fix any problems and have successful monitoring processes in place. Sprint notes that it has invested $1.5 million in a new system that monitors performance of its intermediate carriers.[44] Vonage indicates that it "always examines the performance of underlying providers on any routes at issue," "discontinues use of any poor performing service providers on these routes" and is continuously undertaking tests.[45] Vonage has developed a system that allows it to gain "near real-time NPA-NXX level reports on call completion and call quality metrics."[46] As a result, with such sophisticated systems in place, the reporting requirements should not be overly burdensome.

Time Warner argues that the FCC is already attacking the issue on many fronts and that more action is not needed.[47] Yet, it provides no evidence that call completion rates have improved. Indeed, its only "evidence" is a few out of context quotes. For example, Time Warner cites a May 21, 2012 *ex parte* in which NECA states: "Our current test shows overall completion and quality problems have improved since our September 2011 test." The next

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[43] / NASUCA, at 6-7.

[44] / Sprint, at 10.

[45] / Vonage, at 4.

[46] / *Id.*

[47] / Time Warner, at 6.

sentences, omitted by Time Warner, read:

> The Rural Representatives however, expressed concern over two key areas. First, call completion issues in rural areas are still at unacceptable levels. Overall completion rates for calls placed to rural test lines were 13 times higher than the incompletion rates for calls placed to non-rural test lines. Of the 100 rural telephone lines tested, 20% of calls did not go through at all, while and even greater percentage experienced call quality issues.
>
> Second, we fear this improvement may be a temporary response to recent FCC activity including the Clarification Order which went into effect December 29, 2011 or a planned response to the Rural Association's pre-announced test call project itself.[48]

Similarly, Time Warner cites a September 2011 NARUC *ex parte* stating that FCC actions "did result in a few months of improvement." The full sentence reads: "Moreover, although the FCC staff's actions did result in a few months of improvement, it appears call routing and termination problems are again on the rise."[49] This is hardly an endorsement of the status quo!

The FCC's proposal is not burdensome for those carriers that have already adopted call completion best practices.

Industry contentions that it has the problem under control, so to speak, and is continuously monitoring the network undermine their protestations that the proposed reporting

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[48] / Letter from Colin Sandy, Government Relations Counsel, NECA to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Re: Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Rules and Regulations Implementing the Truth in Caller ID Act of 2009, WC Docket No. 11-39, May 21, 2012, at 1-2.

[49] / Letter from James Bradford Ramsay, NARUC General Counsel to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission, Re: Ex Parte Letter filed in the Matter(s) of the Connect America Fund, WC Docket No. 10-90, National Broadband Plan for Our Future, GN Docket No. 09-51, Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135, High-Cost Universal Service Support, WC Docket No. 05-337, Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92, Federal-State Joint Board on Universal Service, CC Docket No. 96-45, Lifeline and Link-Up, WC Docket No. 03-109, September 29, 2011, at 1 (cite omitted).

requirements outweigh the costs of maintaining the status quo. For example, Comcast indicates that it "collects and actively monitors performance metrics for every intermediate interexchange provider with whom it contracts and regularly meets with each carrier to review their results, both in total and for rural routes in particular. If a particular interexchange service provider's completion performance on a route or routes falls below prescribed levels, Comcast requires the carrier to undertake immediate remedial actions on the affected route or routes. If the problem is not corrected, Comcast ceases to deliver traffic destined for the route(s) at issue to that carrier."[50] Clearly Comcast has the systems in place that are necessary to comply with the FCC's proposed monitoring.

Sprint asserts that the reporting and data retention requirements have costs that "are almost certain to exceed any likely benefit by a large margin, and whose efficacy is in substantial doubt."[51] Despite already having systems that track the performance of intermediate providers, Sprint does not treat rural and non-rural destinations differently and estimates that to collect and report information that the Commission proposes would cost $550,000 per month plus two additional employees (at a cost of $100,000 per year) and further estimates the cost to the industry at "several billion dollars per year."[52] Of course, Sprint concludes with the obligatory broadband blackmail, referring to those dollar estimates as "dollars which could otherwise be spent to deploy broadband, upgrade networks, develop new products, lower prices, etc. . . . It is difficult to imagine, given the volume of calls terminating to RLEC exchanges, that the benefits

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[50]/ Comcast, at 4, footnote omitted.

[51]/ Sprint, at 2.

[52]/ *Id.*, at 18.

of the proposed rules would exceed a multi-billion dollar price tag."[53]

USTelecom describes the requirements proposed by NARUC as "costly and burdensome" and contends that the problem will "be ameliorated" as access charge rates decline.[54] According to Time Warner, the carrier-to-carrier resolution process established by the Rural Call Completion Task Force is sufficient[55] and the proposals are "premature and needlessly burdensome."[56] Time Warner also suggests that these issues are best addressed by the current method of "carrier-to-carrier coordination" and that when terminating carriers indicate to originating carriers that problems exist, the originating carrier can investigate and reroute traffic as necessary. Time Warner contends that "reporting such an event to the Commission would not lead to its being remedied as quickly, if at all."[57] Time Warner provides no explanation for this conclusion. In fact, the requirement to report in the manner proposed by the FCC would alert the carrier to problems they might not have otherwise known about and would lead to more permanent solutions rather than Time Warner's proposed reactive rerouting of calls.[58]

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53 / *Id.*

54 / USTelecom, at 2.

55 / Time Warner, at 2.

56 / *Id.*, at 3.

57 / *Id.*, at 9.

58 / *See, e.g.*, NASUCA, at 7. "While changing the routing on calls to particular destinations thus alleviates the problems for those who have complained, it [does not] prevent like problems from occurring at other locations or even from recurring at a later time at the same locations. Such routing changes will not by themselves restore reliable service to rural America. What is needed is an understanding of the cause of the problem and tools with which to prevent the problem *before* it occurs." *Id.* (emphasis in original), discussing investigations by the staff of the Iowa Utilities Board.

Carriers' financial incentives that lead to unacceptable rural call completion rates may persist for several years, and, furthermore, may not be entirely resolved by the Commission's intercarrier compensation reforms.

Rate Counsel stated in initial comments that "the incentive to avoid terminating charges will remain for many more years, and, during this transition, consumers are unfairly bearing the burden of the distortions in intercarrier compensation markets."[59] However, comments in response to the NPRM suggest that the rural call completion issue may be larger than the arbitrage that is currently enabled by differentials in termination rates.

Certainly, the FCC should reject industry arguments that no rules are needed because the intercarrier compensation reforms have addressed the source of the problem.[60] Sprint argues that the rules are not needed because the recent intercarrier compensation reforms will "reduce and eventually eliminate" the arbitrage incentive.[61] Sprint concludes: "The most effective means of minimizing jurisdictional arbitrage is the on-going implementation of the Commission's intercarrier compensation reforms, not adoption of detailed call completion retention and reporting rules."[62] Even if one concluded that the sole source of the problem was the intercarrier compensation regime (which, evidence suggests, may not be the case), the reforms occur over a long period of time thus leaving consumers vulnerable in the short and medium term.

The Commission should reject recommendations to solve a persistent and pervasive industry problem with a case-by-case approach.

USTelecom contends that the FCC should only collect data as needed as part of

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59 / Rate Counsel, at 5.

60 / *See, e.g.*, Time Warner, at 3; Sprint, at 14.

61 / Sprint, at 14.

62 / *Id.*, at 17.

enforcement cases and "not cast an unnecessarily broad net across all providers or mandate a continuing reporting obligation that is not related to enforcement."[63] However, one of the problems now is that the FCC lacks the data to engage in enforcement! Some industry commenters argue that the Level 3 case shows that there is sufficient complaint data available to the FCC to support its enforcement actions, and that the current system is successful.[64] However, Rural Associations express the concern that "if treated and seen as a one-time event by others in the industry, the Rural Associations fear that other will feel the 'coast is clear' and resume (or undertake) questionable routing practices with relative impunity."[65] Indeed, the Level 3 case demonstrated that the FCC does not have the kind of data it needs and, furthermore, a case-by-case approach does not seem particularly well suited for a problem that few dispute is widespread.

Standards should be absolute (not relative) and rural customers should expect comparable service quality to that received by their urban and suburban counterparts.

Sprint, among other industry commenters, suggests that there are many factors beyond the routing practices of intermediate carriers that may cause rural completion rates to differ from non-rural completion rates, including: auto-dialer fraud; Internet protocol ("IP") traffic that may not be accommodated well on older equipment; incorrect carrier routing tables; and remote host arrangements, among others.[66] Nonetheless, as Rate Counsel stated in initial comments, a rural/nonrural differential in service quality in simply unacceptable and the FCC should adopt

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63 / USTelecom, at 5.

64 / *See, e.g.*, *Id.*, at 7; Time Warner, at 7.

65 / Rural Associations, at 4.

66 / Sprint, at 12.

call communications quality standards that apply to all voice calls.[67]

Contrary to Sprint, NARUC suggests that the FCC does not have any basis for adopting a different standard of call completion for rural areas: "The evidence that would be required would necessarily have to establish the existence of influences outside the control of those entities involved in routing a call to completion that occur only on, or mostly on, calls to rural areas and not calls to urban areas."[68] NARUC contends that the establishment of a 2% differential raises concerns about rate and service comparability pursuant to 47 U.S.C. Section 254(b)(3).[69] NASUCA and Blooston Rural Carriers, among others, put forth the same argument.[70]

Moreover, as NARUC observes, an "acceptable threshold" for call completion for non-rural call completion would have to be established, "[o]therwise, there is no binding acceptable level of call completions required under the *NPRM* proposals, e.g., an originating provider could perform at a 50 percent rural call completion rate, as long as its non-rural completion rate is 52 percent or less."[71] Rate Counsel concurs with INS, and other commenters, that the Commission's call completion standards should be absolute, not relative. INS explains:

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67 / Rate Counsel, at 6-7.

68 / NARUC, at 8. *See*, also, *id.*, at 9 stating: "The FCC will still have to find in the record evidence of a non-rectifiable technical issue occurring mainly in rural areas that supports a 2 percent discriminatory differential and also set an acceptable threshold for *non-rural* call completion as a basis for comparison." (emphasis in original) Verizon also questions the Commission's decision to adopt a 2% threshold arguing that the Commission has not basis for that particular differential (and further argues that the threshold should be higher). Verizon, at 12.

69 / NARUC, at 9.

70 / NASUCA, at 4, describing the proposed differential as: "unreasonable acceptance of lower service quality for customers of rural carriers." See, also, Blooston Rural Carriers stating that such a policy would "sanction lower service quality" in rural areas. Blooston Rural Carriers, at 4-5.

71 / NARUC, at 9.

> In focusing solely on the differential in uncompleted calls to rural areas and urban areas/ the Commission's proposals imply that it is acceptable for an intermediary carrier to block calls to rural exchanges so long as it blocks the same percentage of calls to urban exchanges. However, even a small number of call failures wrongfully shifts the blame to the terminating rural LECs, permitting consumers to perceive rural LECs as the cause of the call failures, when their facilities were functioning properly and were not the reason for the impairment of the consumers' calls. Therefore, INS urges the Commission to adopt a new regulation that imposes a federal standard establishing the maximum number of uncompleted calls to a local exchange that is acceptable during a single month.[72]

Rate Counsel also agrees with INS that the Commission should consider call quality standards in this proceeding, rather than deferring this to another day,[73] and "should adopt a new rule establishing a federal minimum standard for call quality."[74] Clearly, the industry has failed to "self-police" as evidenced by continued failures to provide adequate service quality.

Reporting requirements should apply to all voice communications.

Commenters provide evidence that there may be call completion problems regardless of the technology used. Sprint contends that there is no evidence of wireless issues,[75] but NASUCA cites evidence of a wireless call completion problem.[76] Rate Counsel is persuaded by NASUCA's analysis that the FCC's reasoning for excluding wireless from reporting requirements (based on the absence of high termination charges) fails because the rural call completion problem may be caused by other factors.[77]

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72 / INS, at 10.

73/ *Id.*, at 10-11. *See* Rate Counsel, at 7, stating: "Rate Counsel is perplexed by the FCC's proposal to defer the adoption of quality standards."

74 / INS, at 11. *See, also*, Independents, at 11.

75 / Sprint, at 19.

76 / NASUCA, at 20. See, also, *id.*, at 11, citing January 2013 presentation showing wireless incompletion rate that is higher than wireline.

77 / *Id.*, at 20.

NASUCA's comments provide compelling reasons that the Commission should, at a minimum, apply any rules it adopts to Voice over Internet Protocol ("VoIP") providers.[78] Additionally, NASUCA and Rate Counsel continue to support FCC action to classify VoIP services as telecommunications services.[79] As noted by Rate Counsel in initial comments (at 10), many consumers now rely on VoIP services for their voice service. Consumers have an expectation that they can reach emergency services, family and friends can reach them, they can conduct business, etc., *no matter the underlying technology.* As the traditional PSTN moves towards the "IP transition" consumers should not lose the 99.999% quality standard.[80] NASUCA's description of the issue is fitting: "we are one step away from a world in which not a single American has access to a telecommunications service provider, and where federal telecommunications law applies to 'nothing'. That could not have been the intent of Congress."[81]

Rate Counsel agrees with NASUCA's observation regarding the "coincidence of call completion failures with the increasing origination, transport and termination of voice communications using Internet Protocol ("IP")."[82] NASUCA states: "The present docket provides an exceptionally appropriate occasion on which the Commission might provide such a proper classification, because there is nothing more 'telecom' in character than completing a phone call."[83] No matter the classification, VoIP providers should not escape scrutiny given the

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78 / NASUCA, at 11 - 15. *See, also,* COMPTEL, at 3; USTelecom, at 8.

79 / *Id.*, at 14; Rate Counsel, at 10-11. *See, also,* COMPTEL, at 3.

80 / *See* NASUCA, at 15; Independents, at 3.

81 / NASUCA, at 14, citing FCC Docket No. WC 12-375, NASUCA Initial Comments (filed March 25, 2013), at 11-12.

82 / *Id.*, at 2.

83 / *Id.*, at 3.

move to IP-based services.

Call attempt data should be public.

Rate Counsel disagrees strongly with industry preferences for confidential treatment of call data.[84] Vonage contends that it faces significant incentives to ensure that call completion and service quality issues are properly addressed noting that customer inquiries to its customer care employees are expensive.[85] Vonage fails to explain why it would want to withhold the information as confidential business information while at the same time it relies upon those very incentives to justify inaction by the FCC.

Comcast states that individual service provider submissions should be treated as confidential but "would not object to aggregate data being open to public inspection to the extent that the manner in which it is arrayed would not allow for the identification of individual service provider data."[86] Markets work most efficiently with transparency and easily accessible information about transactions. As INS explains:

> Public reports would be far more effective in deterring and resolving call blocking. Originating carriers may have a greater incentive to take corrective action and monitor intermediary service providers more diligently if they know that their customers and the press will be able to review their reports to the Commission. Rural LECs will also be better able to identify the cause of the uncompleted calls if they are permitted to review the data filed with the Commission. To help better identify the source of call blocking, it is also important that the Commission require the originating provider to publicly report

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84/ *See, e.g.*, COMPTEL, at 10; Comcast, at 3, 5; Vonage, at 2-3.

85 / Vonage, at 2.

86/ CenturyLink, at 12.

> the name of the underlying carriers and intermediary service providers that were involved with the uncompleted call.[87]

NASUCA is correct that consumers have an expectation of privacy,[88] so records should mask the calling and called party numbers in any public reporting.

At a minimum, States should have access to carrier-filed data that pertain to their jurisdictions, and the Commission should clarify that States have an important role to play regarding call completion.

State commissions should have access to the data that carriers file with the FCC that pertains to their respective states.[89] States' access to the carrier-provided information will help states with their enforcement actions.[90] Furthermore, Rate Counsel agrees with NARUC that states have a responsibility, and undertake their own enforcement actions. The FCC should specifically recognize state authority.[91] NASUCA aptly observes that the Commission lacks the resources necessary to address all complaints and that states are closer to consumers.[92]

NASUCA correctly raises the concern (not explicitly addressed in the NPRM) that call completion problems exist on intrastate calls and therefore, the FCC should also examine whether rural customers of non-rural carriers experience similar issues.[93] Rate Counsel agrees

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87 / INS, at 13-14.

88 / NASUCA, at 18.

89/ CPUC, at 1, 6-7.

90/ CPUC, at 7.

91 / NARUC, at 4. See, also, NASUCA, at 6.

92 / NASUCA, at 5.

93 / *Id.*, at 2.

with NARUC that "[r]egardless of how the FCC chooses to designate the underlying data, States should have direct access to data for at least in-state calls in a useable, accessible format." [94]

The Commission should re-examine the proposed Safe Harbors.

Not unexpectedly, many industry commenters support the safe harbors and carve outs.[95] AT&T states that "it is critical that any rules are as narrowly tailored and minimally burdensome as possible to achieve the Commission's objectives, and that those rules subject carriers to new, additional information collection and record retention requirements only where warranted," and further states "[t]hat's why, if the Commission chooses to adopt new rules, AT&T supports the Commission's proposed safe harbors and urges the Commission to resist calls to eliminate them from final rules."[96]

Rate Counsel does not agree that smaller carriers (serving fewer than 100,000 customers) should be exempt from reporting.[97] Similarly, NARUC and NASUCA opposed the 100,000 customer exception.[98] As noted by NARUC, the purpose of the reporting and record retention requirements is to "incentivize" carriers to monitor call completion performance and that unless there is some reason, or evidence, that smaller carriers are not experiencing the call completion problems other carriers are experiencing, there is no reason such an exemption should be made.[99]

NARUC similarly expresses concern that the FCC has not provided any evidence to justify its proposal to exempt carriers that certify they limit intermediaries to two providers in the

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94 / NARUC, at 14.

95 / *See, e.g.*, AT&T, at 2; USTelecom, at 7-8; COMPTEL, at 4.

96 / AT&T, at 2, citing National Association of Regulatory Utility Commissioners Comments, WC Docket No. 13-39 at 10-11 (filed May 8, 2013).

97 / *See, e.g.*, USTelecom, at 8.

98 / NARUC, at 10; NASUCA, at 3.

99 / NARUC, at 10.

call path.[100] Rate Counsel agrees with NARUC that the adoption of the laundry list of exemptions will make it more difficult to figure out not just if calls are completed, but the reasons they are or are not being completed.[101] The Independents describe instances in the Iowa investigation where the originating provider has stated there was only one intermediate provider: "Consequently, the Commission's proposed safe harbor would exempt CenturyLink from reporting the data necessary to prevent interference with communications critical to the protection of human life and public health."[102]

Ironically, Time Warner provides the best example of why the safe harbors may not be good policy:

> . . . the NPRM's first proposed safe harbor would require a provider to certify that a directly connected intermediate provider is restricted by contract to using only one additional intermediate provider in the call path before the call reaches the terminating provider. While it is true that having too many intermediate providers can create some problems, such as post-dial delay, there are instances in which a provider may need to rely on more than one additional intermediate provider—most notably, in times of network congestion, when it may be necessary to route traffic to an alternate provider to ensure that it is completed. The proposed safe harbor thus should allow for the use of additional intermediate providers where circumstances warrant it. Otherwise, providers would only be able to avail themselves of this safe harbor when they contractually agree to an arrangement that could have the ironic consequence of preventing them from remedying certain call completion problems.[103]

This comports with NASUCA's analysis that the proposed safe harbor "does not appear to incorporate any actual solution to the problem."[104]

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100 / *Id.*, at 11, stating that the exemption "appears arbitrary and capricious."

101 / *Id.*, at 12.

102 / Independents, at 12.

103 / Time Warner, at 10.

104 / NASUCA, at 3.

It is premature to establish a sunset date for the proposed rural call completion rules.

Rate Counsel acknowledges that the transition to a uniform intercarrier compensation system may eliminate or reduce the need for rural call completion rules and oversight,[105] but agrees with other commenters that it is premature to establish a sunset date.[106] The industry provides no coherent argument for a definitive sunset date.[107] For example, USTelecom asserts that reporting should end "far earlier" than the time at which terminating access will move to bill-and-keep but provides no justification for this conclusion.[108] Vonage proposes that the proposed rules sunset after a "maximum" two year period "because the economic incentives underlying these rural call completion issues will be sharply reduced within this timeframe" as access charges are moved to bill-and-keep.[109] While Vonage is correct that the rates will be "substantially reduced" within two years, the differentials will remain for a longer period (as noted in Rate Counsel's initial comments).

Furthermore, Rate Counsel does not oppose the concept that CenturyLink raises, but opposes the administrative burden that CenturyLink's proposal would create:

> CenturyLink recommends that at the beginning of each phase of the planned intercarrier compensation reform transition, when terminating access rates are scheduled to be reduced, a review of the continuing need for these proposed requirements should be conducted. CenturyLink expects that the incentive to manage long distance termination costs through the use of intermediate providers will reach a *de minimis* level long before the end of the intercarrier compensation reform transition. The FCC should also be receptive to petitions from interested parties to terminate the proposed requirements for all covered entities, or requests

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105 / *See* Comcast, at 3, 6; Level 3, at 17.

106 / *See, e.g.*, INS, at 20; Independents, at 12.

107 / Supporters of a definitive sunset include, for example: USTelecom, at 5; Vonage, at 6; Time Warner, at 10-11; Verizon, at 14.

108 / USTelecom, at 5.

109 / Vonage, at 6.

for waiver of the requirements as to individual providers, for good cause shown.[110]

Instead the FCC should monitor traffic patterns and assess whether problems have actually been eliminated. During the upcoming years, any amelioration of the rural call traffic problem could be attributed both to the transition (which is gradually narrowing the gap in termination charges) and also to the rules that the FCC establishes in this proceeding. The potential consumer harm of eliminating FCC oversight prematurely greatly outweighs the burden of continuing the system of oversight until and unless it is clear that post-intercarrier compensation transition, rural calls are delivered and completed reliably. Moreover, many commenters have provided sound reasoning that the call completion problem may not be caused solely by differentials in access charges.[111]

Despite arguments that the problems will cease to exist after the transition to bill-and-keep (see, e.g., Time Warner, at 11) commenters have provided compelling evidence that rate differentials and arbitrage may not be the only causes of call completion problems. Instead of prejudging the usefulness of the data, the FCC should examine the data and any insight it may provide as to the causes of the problem before setting a sunset date. The FCC always has the ability to end reporting that is no longer valuable as evidenced by its continuing "Data Innovation Initiative" that examines the FCC's reporting requirements and seeks to eliminate

110/ CenturyLink, at 19.

111/ As INS states: "Because of the many more miles of telephone plant needed to provide service in rural areas, it will always be more expensive to complete a call to a rural resident than to a called party in an urban metropolitan area. Consequently, even when terminating access charges are zero, IXCs and intermediary service providers will still have a profit incentive to block calls to rural areas and avoid incurring the associated costs of transporting and completing such rural calls. INS, therefore, believes that the Commission should not adopt an expiration date for these new regulations at this time." INS, at 20. See, also, Independents, at 12; NASUCA, at 20; USTelecom, at 4; Sprint, at 19.

outdated collections.[112]

Initial comments provide a broad range of support for the Commission's proposed ring signaling integrity requirements.

False audible ringing violates long-standing industry practice and harms consumers. Industry generally supports the Commission's proposed ring signaling integrity requirements.[113] As Comcast observes: "Transmitting an audible ringing before a call has been delivered to the terminating location is flatly inconsistent with numerous industry signaling standards and definitions."[114] Level 3 recommends that the Commission modify the rule to apply to all interexchange carriers that handle a call, including intermediate carriers.[115] Rate Counsel concurs. Level 3 also proposes another modification:

> The rule as proposed by the Commission, however, does not go far enough. Terminating carriers also send call status or disposition codes (also known as "release codes" or "SIP response codes"). If an intermediate carrier deletes or alters these codes, they can frustrate routing by upstream providers. For example, if a downstream intermediate IXC encounters trunk blocking but signals that the number is unassigned rather than that no route is available, then an upstream IXC (which may be the originating carrier or another intermediate provider) will not know to attempt call completion through another provider or over its own facilities. Short circuiting the ordinary flow of information between carriers can be just as disruptive—if not more so—than falsely inserting ringing. The Commission should address false call-status or disposition signaling as a logical outgrowth of its proposal relating to false ringing.[116]

Vonage opposes the "false" ringing proposal because it believes the rule may lead to

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112/ *See* FCC News Release, "FCC Launches Data Innovation Initiative: Agency Appoints Data Officers and Releases Public Notices of Review," June 29, 2010.

113/ *See, e.g.*, Comcast, at 2, 14-15; Level 3, at 3-4.

114/ Comcast, at 15.

115/ Level 3, at 3.

116/ *Id.*, at 4.

unintended consequences. Vonage argues that the real issue is one of "post-dial delay."[117] Reporting, according to Vonage, will reduce post-dial delay through increased hang-ups and thus adversely affect call completion statistics.

> The quarterly reports should facilitate reductions in post-dial delay partly because any significant post-dial delays will result in increased calling party hang-ups, which will adversely affect the rural call completion metrics in the quarterly reports. Thus, strong rural call completion performance goes hand-in-hand with minimizing post-dial delays. Prohibiting false ringing could have unintended consequences such as having extended silence after the call is placed which could lead to confusion and increased hang-ups by the calling party which will increase, rather than reduce, call completion issues.[118]

NARUC's comments suggest a solution to Vonage's concern. NARUC also points out the potential for consumer hang-ups due to hearing "dead air." NARUC proposes that the FCC require that a caller receive a message that the call is being processed, and that audible ringing or intercept message is appropriate only once the terminating carrier has provided signals that the called party has actually been alerted to the call.[119]

The Commission should consider the adoption of proposals for the creation of a database of contacts to assist in call completion resolution.

Vonage proposes that the FCC develop a database of contacts for directly connected carriers providing service in rural areas "to allow for more efficient resolution" of issues.[120] Certainly, if a clearinghouse of contacts can be established with minimal cost on the part of the Commission and if it could reduce the need for Commission and state commission intervention,

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[117] / Vonage, at 9-10.

[118] / *Id.*, at 11.

[119] / NARUC, at 14.

[120] / Vonage, at 5. See, also, *id.*, at 12-13.

this initiative merits consideration. NARUC also supports such a database.[121] Rate Counsel's support is mitigated in part though because this activity seems to be more appropriately a carrier's cost of doing business rather than a government agency's responsibility.

III. CONCLUSION

All consumers deserve access to a reliable telephone network regardless of their location or the technology they use. Data and reporting are essential to detect call termination issues and the reasons for those issues. However, Rate Counsel concurs with NARUC: "collecting data alone is not sufficient to resolve the problem."[122] Timely enforcement is critically important and the proposed reporting will provide the necessary tools to detect bad behavior. But, the Commission must remain vigilant in enforcing its current rules. Consumers should not be required to await the completion of intercarrier compensation reform and it is not clear that such reform will entirely solve all rural call completion issues.

Respectfully submitted,

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[121] / NARUC, at 15.

[122] / *Id.*, at 3.

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